

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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HERMAN CRUZ,

Plaintiff,

-v.-

9:05-CV-1067  
(FJS)(DEP)

M. CHURCH, Correctional Officer,  
Upstate Correctional Facility, *et al.*,

Defendants.

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APPEARANCES:

HERMAN CRUZ  
Plaintiff, *pro se*  
86-C-0468  
Upstate Correctional Facility  
PO Box 2000  
309 Bare Hill Road  
Malone, NY 12953

DAVID E. PEEBLES, U.S. MAGISTRATE JUDGE

**ORDER**

The Clerk has sent to the Court a civil rights Complaint, together with an application to proceed *in forma pauperis*, filed by Herman Cruz ("Plaintiff" or "Cruz"), who is currently incarcerated at Upstate Correctional Facility.

In his *pro se* Complaint, Plaintiff alleges that the Defendants assaulted him and have engaged in retaliatory conduct because Plaintiff filed a prior federal court action in this District.<sup>1</sup> For a more complete statement of Plaintiff's claims, reference is made to the entire Complaint.

As to Plaintiff's *in forma pauperis* application, after reviewing the entire file, the

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<sup>1</sup>Plaintiff filed *Cruz v. Thompson*, 9:04-CV-1497 (LEK/GHL), in this Court on December 29, 2004. Defendants Thompson was served with process in that action on May 10, 2005 and filed an Answer on May 22, 2005.

Court finds that the Plaintiff may properly proceed with this matter *in forma pauperis*.

WHEREFORE, it is hereby

ORDERED, that Plaintiff's *in forma pauperis* application is granted.<sup>2</sup> The Clerk shall issue Summons and forward them, along with copies of the Complaint, to the United States Marshal for service upon the named Defendants. The Clerk shall forward a copy of the Summons and Complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order, and it is further

ORDERED, that the Clerk provide the Superintendent of the facility, designated by Plaintiff as his current location, with a copy of Plaintiff's authorization form, and notify the official that this action has been filed and that Plaintiff is required to pay the entire statutory filing fee of \$250.00 pursuant to 28 U.S.C. § 1915, and it is further

ORDERED, that the Clerk provide a copy of Plaintiff's authorization form to the Financial Deputy of the Clerk's Office, and it is further

ORDERED, that a response to Plaintiff's complaint be filed by the Defendants or their counsel as provided for in the Federal Rules of Civil Procedure after service of process on the Defendants, and it is further

ORDERED, that all pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367.

**Any paper sent by a party to the Court or the Clerk must bear the case number**

**assigned to this action and must be accompanied by a certificate showing that a**

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<sup>2</sup> Plaintiff should note that although the application to proceed *in forma pauperis* has been granted, Plaintiff will still be required to pay fees that he may incur in this action, including copying and/or witness fees.

**true and correct copy of same was mailed to all opposing parties or their counsel.**

**Any document received by the Clerk or the Court which does not include a**

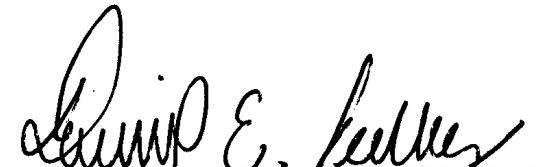
**certificate of service showing that a copy was served upon all opposing parties**

**or their attorneys will be returned, without processing.** Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action, including an original Summons showing a complete title of this action, a civil cover sheet, sufficient copies of completed USM-285 forms and copies of his Complaint (along with any exhibits attached thereto) for service upon the Defendants. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Rules. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in Plaintiff's address;**

**his failure to do same will result in the dismissal of this action.** All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on the Plaintiff by regular mail.

IT IS SO ORDERED.



David E. Peebles  
U.S. Magistrate Judge

Dated: August 26, 2005  
Syracuse, New York